

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

Douglas R. Baldwin,

Debtor(s).

Case No.: 2:14-bk-13616-NB

CHAPTER 13

**CLASSIFICATION-STUDENT LOAN DEBT:
MEMORIALIZATION OF TENTATIVE
RULING UNDER 11 U.S.C. § 1322(b)(1)**

[No Hearing Required]

On February 25, 2015, this court issued its tentative ruling (dkt. 35) addressing the above-captioned debtor's proposed chapter 13 plan (dkt. 2, p. 6) which discriminated in favor of the debtor's student loan debt. That tentative ruling, attached hereto as **Exhibit A**, was never made into a final ruling of this court because the debtor opted to amend his chapter 13 plan (dkt. 40) to moot the issue and that amended plan was confirmed at a hearing on August 27, 2015. Nevertheless, so that any parties in a

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1 future case involving the same issues will have notice of the thinking of the undersigned
2 Bankruptcy Judge on these issues, this document is being filed to memorialize that
3 tentative ruling and the related proceedings recited above.

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25 Date: September 2, 2015



Neil W. Bason
United States Bankruptcy Judge

EXHIBIT A

Case 2:14-bk-13616-NB Doc 35 Filed 02/25/15 Entered 02/25/15 11:03:17 Desc
Main Document Page 1 of 4



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In re:

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CHAPTER 13

TENTATIVE RULING

Confirmation Hearing

Date: 3/5/15

Time: 9:30 a.m.

Courtroom: 1545

The tentative ruling is to deny confirmation of the chapter 13 plan proposed by the debtor ("Baldwin") for the following reasons. Counsel for Baldwin should be prepared to address at the hearing whether he will pursue the other options described below, and a proposed schedule for doing so.

Under the Bankruptcy Code, a chapter 13 plan may not "discriminate unfairly" against any class of claims. 11 U.S.C. § 1322(b)(1). On the present record, Baldwin has not established that his proposed discrimination in favor of student loan debt (1) has a reasonable basis, (2) is necessary for him to carry out a plan, (3) is proposed in good faith, and (4) is proportional to the basis or rationale for the discrimination. *In re Serna*,

Case 2:14-bk-13616-NB Doc 35 Filed 02/25/15 Entered 02/25/15 11:03:17 Desc
Main Document Page 2 of 4

1 173 B.R. 654 (9th Cir. BAP 1994) (*following In re Wolff*, 22 B.R. 510, 512 (9th Cir. BAP
2 1982)) (the “*Sperma/Wolff* test”). It is particularly significant that Baldwin has not shown
3 that he has explored other options.

4 First, his budget, while far from lavish, might be reduced (such as by maintaining
5 two vehicles instead of three). If so, then presumably he could pay more of his student
6 loan debt without having to pay less to other creditors.

7 Second, he could seek voluntary debt forgiveness from the holders of the student
8 loan debt, or an income contingent repayment plan, or some other compromise. The
9 record does not show that he has applied for these things.

10 Third, if despite such efforts he is still unable to pay his student loan debts while
11 maintaining even a “minimal” standard of living, then he might qualify for a partial or full
12 discharge of the student loan debt. He is over 65 years old; it appears that in the past
13 he has made some significant payments on the student loan debt (*see Response*, dkt.
14 33, Ex. B); and he alleges that, even if he were to devote all of his disposable income to
15 paying his debts pro rata for the next five years, it is likely that he would owe more than
16 on the petition date “due to the capitalized interest.” *Response* (dkt. 33 p. 4:1). *See*
17 *generally In re Saxman*, 325 F.3d 1168, 1173-74 (9th Cir. 2003) (*following Brunner v.*
18 *N.Y. State Higher Edu. Servs.*, 831 F.2d 395, 396 (2d Cir. 1987)). *See also In re*
19 *Coleman*, 560 F.3d 1000, 1011 n.26 (9th Cir. 2009) (suggesting in dicta that student
20 loan debt theoretically might be separately classified and paid more than other creditors,
21 but “[w]ithout an undue hardship determination, [the] classification analysis is greatly
22 impeded.”).

23 On the other hand, even if Baldwin has no viable options to pay his student loan
24 debt, that does not necessarily justify discrimination against other creditors. For
25 example, if he incurred the debt knowing that he would be unable to repay it or if he did
26 not attempt in good faith the repay that debt, then perhaps he is not acting in good faith
27 now by proposing to pay his student loan debt at the expense of other creditors.

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Case 2:14-bk-13616-NB Doc 35 Filed 02/25/15 Entered 02/25/15 11:03:17 Desc
Main Document Page 3 of 4

1 In sum, on the present record Baldwin has not established a sufficient basis to
2 discriminate under the *Sperna/Wolff* test.

3 It is true that, under an additional clause in section 1322(b)(1), a plan may “treat
4 claims for a consumer debt” differently from similar claims if “an individual is liable on
5 such consumer debt with the debtor,” and roughly three-quarters of Baldwin’s student
6 loan debt is as a co-signer of his wife’s student loans. The courts disagree how to
7 interpret this portion of the statute, but a persuasive decision of the Bankruptcy
8 Appellate Panel for the Ninth Circuit (the “BAP”) interprets the quoted text as an
9 example of a type of discrimination that generally is permissible but still must pass the
10 test of not discriminating unfairly. *In re Renteria*, 470 B.R. 838, 846-47 (9th Cir. BAP
11 2012) (2-1 decision). In dicta the BAP suggested taking into consideration “whether the
12 codebtor undertook the underlying liability for the debtor’s benefit or vice-versa,” as well
13 as whether the plan satisfies the other requirements for plan confirmation, particularly
14 the good faith requirement under 11 U.S.C. § 1325(a)(3), and whether the claim truly is
15 a codebtor consumer claim. *Id.* at 843 n.6 (citation omitted). Baldwin has not shown
16 that he received any benefit from the student loans to his wife, or that she is incapable
17 of repaying those loans herself, or other facts and circumstances that might bear on
18 whether his proposed discrimination is “unfair.” Accordingly, even as to the loans on
19 which he is a codebtor, Baldwin has not established a sufficient basis to discriminate
20 against non-student loan claims.

21 The foregoing analysis is supported by a case in which the court refused to
22 confirm a plan in which the debtors attempted to favor student loan debts that they had
23 incurred as co-signers of their children’s student loans, because the children were the
24 ones who received the benefit of the loans, and because the children “would be
25 ordinarily expected to pay the obligations anyway.” *See In re Beauchamp*, 283 B.R.
26 287, 289 (Bankr. D. Minn. 2002). It is true that spouses are different from children,
27 because in a community property state such as California the spouse’s debts generally
28 are also obligations of the debtor, but this cuts both ways. On the one hand, the

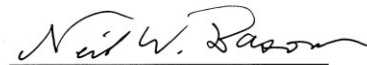
Case 2:14-bk-13616-NB Doc 35 Filed 02/25/15 Entered 02/25/15 11:03:17 Desc
Main Document Page 4 of 4

1 debtor's community debt liability might mean that he has a greater need to discharge his
2 wife's student loan debts than if he had been a cosigner on childrens' loans; but on the
3 other hand (a) perhaps if the debtor and the spouse want a discharge of those debts
4 then they should file a joint chapter 13 case, or alternatively (b) perhaps the discharge
5 of the debtor would effectively discharge the spouse as well under 11 U.S.C. § 524 (at
6 least as to after-acquired community property, as long as they stay married). See
7 generally *In re Kimmel*, 367 B.R. 166, 170-74 (Bankr. N.D. Cal. 2007), *aff'd*, 378 B.R.
8 630 (9th Cir. BAP 2007).

9 At the confirmation hearing, counsel for the debtor should be prepared to
10 address (1) what budget changes Baldwin and his non-debtor spouse will make, (2)
11 whether they have applied for forgiveness of some or all of their student loan debt and
12 the status of any such applications, (3) whether Baldwin's spouse will seek to become a
13 joint debtor in this bankruptcy case, (4) whether there is any reason why Baldwin (and
14 his spouse if she chooses to become a joint debtor) should not be required
15 expeditiously to prosecute an action to discharge his student loan debts under 11
16 U.S.C. § 523(a)(8) and Fed. R. Bankr. P. 4007(b), and (5) any other facts and
17 circumstances that may be relevant to the proposed separate classification of the
18 student loan debts.

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24 Date: February 25, 2015

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26 Neil W. Bason
27 United States Bankruptcy Judge
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